

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 25 1995

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act --	)	
Competitive Bidding	)	ET Docket No. 92-100
	)	
Requests for Stay and	)	File Nos. 00001-CW-L-95
Deferral of MTA Commercial	)	through 00098-CW-L-95
Broadband PCS Licensing and	)	
	)	
Applications of PCS PRIMECO.L.P.	)	
for Broadband PCS Licenses	)	

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**CONSOLIDATED OPPOSITION**

Ameritech Wireless Communications, Inc. (AWCI), by its attorney and pursuant to Rule Section 1.45(b), hereby opposes the following pleadings submitted on May 12, 1995 seeking to delay the licensing of the A and B Block Major Trading Area (MTA) Personal Communications Services (PCS) frequencies: (1) Petition to Deny and Request for Stay filed by the National Association of Black Owned Broadcasters, Percy Sutton, and the National Association for the Advancement of Colored People (collectively, "NABOB"); (2) Application for Review and Request for Stay also filed by NABOB; and (3) Petition for Reconsideration by the Full Commission of Denial of Communications One, Inc. Emergency Motion to Defer MTA PCS Licensing ("CI Petition") (collectively, the "Petitions" or "Petitioners," as appropriate).<sup>1</sup> As demonstrated below, these

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<sup>1</sup> AWCI has been advised by the staff of the Wireless Telecommunications Bureau that, because the petitioners included their stay requests with other pleadings, the opposition deadline

parties have failed to justify the extraordinary measure of delaying the A and B Block licensing, and such course of action would be contrary to the public interest.<sup>2</sup>

#### **I. STATEMENT OF INTEREST**

AWCI participated in the A and B Block auction, and was the successful bidder for 30 MHz licenses to serve the Cleveland, Ohio MTA (Market No. M-16, Frequency Block A) and the Indianapolis, Indiana MTA (Market No. M-31, Frequency Block B). AWCI has bid \$158,100,000. It has already paid to the United States Government \$31,620,000, in the form of its upfront payment and subsequent bid deposit. AWCI stands ready to pay the balance of its bid, plan and construct its licensed systems, and provide advanced wireless services to the public in these areas. Therefore, any delay in the licensing of the A and B Blocks will harm AWCI and its prospective customers substantially.

#### **II. PETITIONERS HAVE NOT DEMONSTRATED THAT A STAY IS JUSTIFIED.**

Other parties in this proceeding have more than adequately demonstrated that NABOB and CI have failed to demonstrate justification for a stay. See May 19, 1995 Consolidated Opposition of PCS PRIMECO, L.P.; May 19, 1995 Opposition of Pacific Telesis Mobile Systems; May 19, 1995 Opposition to Request for Stay of WirelessCo,

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is the normal 10 days plus mailing days contemplated by Rule Section 1.45(b).

<sup>2</sup> The CI Petition is primarily directed against three A and B Block auction winners, none of which are AWCI. Therefore, AWCI opposes the CI Petition only to the extent that it seeks to delay the A and B Block licensing process in general.

L.P. and PhillieCo, L.P. AWCI concurs in the substantial showing by these parties that the petitions must be denied. As demonstrated in the oppositions, each of the stay requests were improperly included with other requests for Commission action, in violation of Rule Section 1.44(e). More importantly, the Petitions have utterly failed to make the showing required by Virginia Petroleum Jobbers Ass'n v. FCC, 259 F.2d 921 (D.C. Cir. 1958) as modified by Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977). Under this precedent, the Petitioners must show (1) a strong likelihood of prevailing on the merits; (2) irreparable harm if the stay is not granted; (3) the absence of harm to others if the stay is granted; and (4) that the public interest will be served if the stay is granted.

The Petitioners fail to show that they are likely to succeed on the merits of their challenge to the A and B Block licensing. The Commission has already addressed the arguments by the Petitioners that designated entities should have been given more benefits in the A and B Block auctions, pursuant to exhaustive rulemakings in which Petitioners were given numerous opportunities to participate. Indeed, Petitioners took full advantage of these opportunities. The Commission properly concluded that its dual statutory obligations to speed advanced wireless services to the public and to encourage participation by designated entities was best met by allowing designated entity participation in the A and B Block auction, while setting aside the C and F Blocks as

restricted licenses for smaller entities only. The Commission has also accorded numerous benefits to designated entities seeking these set-aside licenses. In this way, designated entities have full opportunity to bid on all licenses, and are given substantial advantages over other applicants with regard to a third of the available PCS spectrum. See Fifth Report and Order, PP Docket No. 93-253, 9 FCC Rcd 5532, 5580 (1994). The Commission also took extraordinary measures to ensure that the licenses will be widely disseminated, including spectrum caps, cellular cross ownership restrictions, and a limit on the total number of licenses that can be held.

Petitioners' argument that the C Block licensees will be harmed by a competitive headstart is likewise unfounded. The headstart issue never materialized in the context of cellular service, and the Commission has already addressed Petitioners' headstart arguments in the PCS rulemakings. See Fourth Memorandum Opinion and Order, PP Docket No. 93-253, 9 FCC Rcd 6858, 6863-64 (1994). Petitioners have not demonstrated why reseller rights will not mitigate any arguable headstart. Moreover, a headstart did not materialize in cellular even though both licensees in each market were providing substantially identical services. PCS, on the other hand, will provide a broad array of advanced wireless video and data services, with numerous niche services possible. Notice of Proposed Rulemaking and Tentative Decision, FCC Rcd 5676, 5689 (1992). Therefore, it is even less likely that the A and B Block winners would be able to capture a dominant market share, where C

Block licensees will be able to focus on services of which the A and B Block winners may not even be aware. There will be a premium on market analysis and creativity.

Instead, the Commission properly found that staggered auctions would (1) help to meet the Congressional mandate to speed service to the public, and (2) benefit designated entities by facilitating partnerships between these entities and the A and B Block auction losers, and by providing C Block auction participants with important information concerning the value of the spectrum. Petitioners' efforts to reargue these issues constitute an untimely request for reconsideration of the rulemaking. Fourth Memorandum and Order, supra, 9 FCC Rcd at 6863-64.

Thus, Petitioners have not shown a likelihood of success on the merits. For these same reasons, the Petitioners have not shown irreparable harm. C Block bidders will benefit from the staggered auction by gaining potential investors from those who were unsuccessful in the A and B Block auction.

In contrast, others will be significantly harmed by a licensing delay. First and foremost, the public will be harmed by a delay in the availability of advanced telecommunications services. Also, to the extent that broadband PCS will compete with cellular, the public will also be deprived of lower prices. AWCI will be harmed by having its substantial deposit unavailable; moreover, the remainder of its bid will not be available for other projects, since AWCI must be held ready to pay to the Commission upon short notice. Also, AWCI's business plans will be disrupted.

Finally, the United States Government will be substantially harmed in its efforts to bring the national deficit under control. This is one of the central issues which the Government is currently trying to address.

Finally, for all of the above reasons, a grant of the requested stays would not serve the public interest.

The same substantial evidence against a stay likewise refutes NABOB's Petition to Deny. NABOB has made vague allegations of anti-competitive conduct by certain bidders, which AWCI presumes will be addressed by these parties. However, NABOB's arguments against those bidders in no way justifies a delay in the licensing of AWCI and the other A and B Block winners who are in no way connected with these allegations. The only other argument that AWCI's application should be denied is the unfounded claim of a headstart issue. As demonstrated above, this claim is utterly without merit, and constitutes an untimely petition for reconsideration. Indeed, AWCI notes that none of the parties have alleged that they will bid on C Block licenses in the Cleveland and Indianapolis MTAs. Therefore, there is no reason to delay the grant of AWCI's license.


**CONCLUSION**

In light of the foregoing, it is respectfully requested that the Petitions be dismissed as once. Otherwise, Petitioners will be successful in improperly delaying service to the public even if their requests are ultimately denied.

Respectfully submitted,

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Filed: May 25, 1995

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